IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 1411 of 2004
In
SPECIAL CIVIL APPLICATION No. 8810 of 1989
With
LETTERS PATENT APPEAL No. 1447 of 2003
In CIVIL APPLICATION No. 8396 of 2002
With
CIVIL APPLICATION No. 10661 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATHAN A A - Appellant(s)
Versus
BHARUCH MUNICIPALITY & 1 - Respondent(s)

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Appearance :
MR SUNIL K SHAH for Appellant(s) : 1 - 4.
None for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 30/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

Mr.Sunil K Shah, learned counsel for the appellants. Mr.H.D.Dave, Assistant Government Pleader for respondent No.2. None for respondents No.1 and 3 though served.

2. This order shall dispose of Letters Patent Appeal 1411 of 2004 and Letters Patent Appeal No.1447 of 2003.

3. Letters Patent Appeal No.1411 of 2004 has been filed by the appellants against order dated 9th November, 2001 passed in Special Civil Application No.8810 of 1989 (Pathan AA and four others V/s Bharuch Municipality and another). Letters Patent Appeal No.1447 of 2003 has been filed by the very same appellants against the order dated 28th February, 2003 passed on Civil Application No.8396 of 2002 filed in Special Civil Application No.8810 of 1989.

4. The facts for disposal of Letters Patent Appeal No.1411 of 2004 in short are that the petitioners who are

appointed as Clerks on daily wage basis by respondent – Municipality in between 1980 and 1984 were not being paid regular time scale nor were being treated as Clerks in regular time scale. Therefore, the petitioners had sought a writ from the Court that proper salary be paid to them and they be treated to be in regular time scale. The respondent – Bharuch Municipality submitted before the learned Single Judge that under different orders dated 6th April, 1993 for the petitioners No.1 and 2, 31st March, 1994 for petitioner No.3, 12th January, 1995 for petitioner No.4 and 11th June, 1996 for petitioner No.5, the said petitioners have been absorbed and their services have been regularized in the regular time scale of Rs.950-1500 as Clerks with the respondent – Municipality. It appears that at the time of the admission of said Special Civil Application No.8810 of 1989, no interim relief was granted to the petitioner. Therefore, they took up the matter in Letters Patent Appeal No.348 of 1990. The said Letters Patent Appeal was disposed of on 1st May, 1991 and it was ordered that the Municipality shall pay the minimum time scale to the Clerks of the Municipality with effect from May, 1991. The learned Single Judge, after hearing the parties and further observing the order passed in Letters Patent

Appeal No.348 of 1990, directed the Municipality to treat the petitioners as Clerks in regular time scale without any break with effect from 1st August, 1987. The other reliefs claimed by the petitioners were rejected. While rejecting the said reliefs, the Court, however, observed that the other reliefs mentioned in paragraph 12 are not required to be granted in light of the fact that the services of the petitioners have been regularized only from the date as mentioned in the said order i.e. 1st August, 1987.

5. Being aggrieved by the non-grant of some of the reliefs, the said petitioners have filed Letters Patent Appeal No.1411 of 2004. After the orders were passed by the learned Single Judge, the respondent No.1 – Municipality calculated the amount and made certain payments. The petitioners being aggrieved filed a petition for drawing contempt proceedings with a submission that the order passed by the learned Single Judge was being flouted and also filed Civil Application No.8396 of 2002 with a prayer that appropriate action be taken against the respondent for violating the order and the difference of arrears of salary and other benefits, allowances etc., be directed to be paid to the applicants

with 12% interest. The said Civil Application No.8396 of 2002 was rejected by the learned Single Judge on 28th February, 2003. Against the said order, Letters Patent Appeal No.1447 of 2003 has been filed.

6. Mr.Shah, learned counsel for the appellants submits that so far as Letters Patent Appeal No.1411 of 2004 is concerned, the petitioners would have no grievance if they are taken to be regularized with effect from 1st August, 1987. According to him, the petitioners are required to press this appeal because by subsequent order passed in Civil Application No.8396 of 2002, the learned Single Judge has observed that the Municipality was justified in calculating the pay in the manner in which they have done it and no action is called for. So far as Letters Patent Appeal No.1411 of 2004 is concerned, we must immediately observe that the learned Single Judge while allowing the petition in part, had directed the Municipality to treat the petitioners as Clerks in regular time scale without any break since 1st August, 1987. The Court has also observed that as the services of the petitioners have been regularized only from the date as mentioned in its order, the other reliefs were not required to be given. A juxtapose

reading of these two observations shall make it clear that the learned Judge was of the opinion that services of the petitioners were regularized with effect from 1st August, 1987 in regular time scale and, therefore, he was refusing grant of the other reliefs claimed by the appellants. After hearing learned counsel for the appellants, we are unable to hold that there are any grounds to interfere in the order passed in Special Civil Application No.8810 of 1989. The appeal is accordingly dismissed.

7. So far as Letters Patent Appeal No.1447 of 2003 is concerned, the application of the applicants has been rejected mainly on the ground that the contempt petition filed by the petitioners had already been rejected and the respondent – Municipality was paying the salary in regular pay scale with effect from 1st August, 1987. In our opinion, the clarificatory order dated 28th February, 2003 cannot be allowed to stand so far as it refuses the relief to the petitioner in relation to the payments. While disposing of Special Civil Application No.8810 of 1989, the learned Single Judge had observed that he was not granting other reliefs as the regularization was being given with effect from 1st August, 1987 and if those

were the observations, at a later stage, the said observations could not be interpreted contrary to the interest of the present appellants. The order passed in Civil Application No.8396 of 2002 dated 28th February, 2003 is hereby set aside. It is held that the petitioners would be deemed to be regularized with effect from 1st August, 1987 and would be entitled to all monetary benefits including perks etc., with effect from 1st August, 1987. As none has appeared to oppose the petitions, there shall be no orders as to costs.

8. Civil Application No.10661 of 2003, in view of the final disposal of these appeals, stands disposed of.

9. The respondents are hereby advised to take appropriate steps in accordance with this judgment within a period of three months, failing which they shall be exposing themselves to a serious risk.

(R.S.GARG, J)

(SHARAD D DAVE, J)

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